

MIGRATORY WORKERS

Exchange of notes at México April 29, 1943

Entered into force April 29, 1943

*Terminated March 1, 1947, by agreement of November 15, 1946*¹

57 Stat. 1353; Executive Agreement Series 376

The American Ambassador to the Minister of Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
México, D.F., April 29, 1943

No. 1218

EXCELLENCY:

I have the honor to refer to my note No. 990 of January 29, 1943, inquiring whether Your Excellency's Government would be disposed to conclude an arrangement whereby unskilled non-agricultural workers would be recruited in Mexico for non-agricultural work in the United States as well as to Your Excellency's acknowledgment of February 3, 1943.

The possibility of the recruiting of other than farm labor was likewise foreseen at the time when the agricultural labor agreement was signed on August 4, 1942² and the following language is a part of that Agreement:

"It is understood that, with reference to the departure from Mexico of Mexican workers, who are not farm laborers, there shall govern in understandings reached by agencies of the respective Governments the same fundamental principles which have been applied here to the departure of farm labor."

The duly authorized representatives of the United States Government together with authorized representatives of the Mexican Government have reached an agreement covering non-agricultural workers as follows:

"In order that Mexican workers may be made available for non-agricultural employment in the United States and, at the same time, to ensure that such workers will be adequately protected while out of Mexico, the following provisions are suggested for approval by representatives of the Governments of both countries.

¹ TIAS 1684, *post*, p. 1215.

² EAS 278, *ante*, p. 1069.

"These provisions include the same fundamental principles which were applied to the departure of farm labor, in accordance with the agreement between the Republic of Mexico and the United States of America dated August 4, 1942.

"I. GENERAL PRINCIPLES

"1. Mexican nationals who enter the United States under contract with an appropriate Government department or agency shall not be subject to military service for the United States.

"2. In accordance with the principles enunciated in Executive Order No. 8802, issued at the White House on June 25, 1941,^a Mexican nationals who enter the United States as a result of any understanding between the two Governments shall not suffer discriminatory acts of any kind.

"3. Mexican nationals entering the United States for employment in the United States under this agreement shall enjoy the guarantees of transportation, living expenses and repatriation established in Article 29 of the Mexican Federal Labor Law which reads as follows:

"Article 29. All contracts entered into by Mexican workers, for lending their services outside of their country, shall be made in writing, legalized by the municipal authorities of the locality where entered into and visaed by the Consul of the country where their services are being used. Furthermore, such contract shall contain, as a requisite of validity of same, the following stipulations, without which the contract is invalid:

"I. Transportation and subsistence expenses for the worker, and his family if such is the case, and all other expenses which originate from point of origin to border points and compliance of immigration requirements, or for any other similar concept, shall be paid exclusively by the employer or the contractual parties.

"II. The worker shall be paid in full the salary agreed upon, from which no deductions shall be made in any amount for any of the concepts mentioned in the above sub-paragraph.

"III. The employer or contractor shall issue a bond or constitute a deposit in cash in the Bank of Workers, or in the absence of same, in the Bank of Mexico, to the entire satisfaction of the respective labor authorities, for a sum equal to repatriation costs of the worker and his family, and those originated by transportation to point of origin.

"'Once the employer establishes proof of having covered such expenses or the refusal of the worker to return to his country, and that he does not owe the worker any sum covering salary or indemnization to which he might have a right, the labor authorities shall authorize the return of the deposit or the cancellation of the bond issued.' "

^a 6 Fed. Reg. 3109.

"It is specifically understood that the provisions of Section 3 of Article 29 above-mentioned shall not apply as between the Governments of the United States and of Mexico notwithstanding the inclusion of this section in this agreement in view of the obligations assumed by the United States Government under Section III, paragraph A, Item 1, of this same agreement.

"4. Mexican nationals entering the United States under this agreement shall not be employed to displace other workers, or for the purpose of reducing rates of pay or other standards previously established.

"II. PROCEDURES

"A. *Contracts*

"1. Contracts shall be made between the Government of the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, and each worker, under the supervision of the Mexican Government. Such contracts shall be written in the Spanish and English languages and shall be in such form as may be approved by the Mexican Government.

"2. The Government of the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, shall enter into contracts with employers in the United States by whom workers will be employed, which shall be in accordance with the principles agreed upon by the two Governments.

"3. When the word 'employer' is used hereinafter it shall be understood to mean the owner or operator of a non-agricultural enterprise in the United States by which the Mexican will be employed; and the word 'worker' shall mean a Mexican worker entering the United States under this agreement.

"B. *Admission of Workers into the United States*

"1. The United States Public Health Service, in collaboration with the Mexican Public Health authorities, shall provide physical examination at the place of selection to determine whether each worker meets the physical requirements of the immigration authorities and the prospective employer.

"C. *Numbers*

"1. The Government of the United States shall determine in each case the number of workers needed for non-agricultural labor and shall advise the Mexican Government from time to time.

"2. The Government of Mexico shall determine in each case the number and types of workers who may leave the country without detriment to its national economy.

“III. CONDITIONS UNDER WHICH MEXICAN WORKERS SHALL BE CONTRACTED

“A. *Transportation*

“1. All costs of transportation (including subsistence) from the place where contracted to the place of employment and return to the place of contract, including expenses occasioned by the immigration regulations of the United States of America shall be met by the United States Government acting through the Chairman of the War Manpower Commission.

“2. Personal effects of each person transported up to a maximum of 35 kilos per person (77 pounds), or such additional amount as may be found to be appropriate in the event household effects are transported, shall be transported at the expense of the United States of America acting through the Chairman of the War Manpower Commission.

“3. In accord with the intent of article 29 of the Mexican Federal Labor Law, it is expected that the United States Government may, at its election, arrange with the employer for such employer to pay all or part of the cost accruing under 1 and 2 above. This does not diminish the scope of the obligations which the United States Government assumes under 1 and 2 above.

“B. *Wages and Employment*

“1. Wages paid to Mexican workers under this agreement shall be the same as those paid for similar work to domestic workers at the place of employment. (If wages are to be paid on a piece-rate basis, the rate shall be so set as to enable a worker of average ability to earn the prevailing wage.) In no case shall the wages be less than 46 cents per hour.

“2. Each worker shall be exclusively employed as a non-agricultural laborer for which contracted; and any change to another type of work within this classification shall be made only with the express approval of the worker and with the consent of the Mexican Government.

“3. Wages shall be paid in full with no deductions except those required by law of domestic workers engaged in similar employment.

“4. Work for minors under 16 years shall be strictly prohibited and minors shall have the same schooling opportunities as those enjoyed by children of other workers in the same locality.

“5. Workers domiciled at any place of employment under this agreement shall be free to obtain articles for their personal consumption or that of their families wherever it is most convenient for them.

“6. The Mexican workers will receive hygienic lodgings adequate to the physical condition of the region, of the type furnished domestic workers engaged in similar employment; sanitary and medical services, and restaurant facilities enjoyed by workers admitted under this understanding shall be not less favorable to them than those enjoyed by other workers engaged in similar employment at the same place of employment.

"7. Workers admitted under this agreement shall enjoy as regards occupational diseases and accidents the same guarantees enjoyed by domestic workers engaged in similar work under Federal or State legislation in the United States.

"8. Groups of workers admitted under this understanding shall elect their own spokesmen to deal with the employer, with the duly authorized representative of the craft or class of employees, or with other interested parties, concerning matters arising out of the interpretation or application of this agreement; but it is understood that all such spokesmen shall be working members of the groups.

"The Mexican Consuls, assisted by the Mexican field inspectors, recognized as such by the War Manpower Commission, within their corresponding jurisdictions, will seek to ensure that all measures of protection are taken in the interests of the Mexican workers in all questions affecting them. Complaints of the Mexican officials involved should be taken up in the first instance with that office of the War Manpower Commission nearest to the place where the complaint arises. They will have free access to the places of work of the Mexican workers. The War Manpower Commission will see that the Employers grant all facilities to the Mexican Consuls and the assistant field inspectors of the Mexican Government for the compliance of all the clauses of this contract.

"9. Mexican workers shall be afforded opportunity to work the same number of working hours per week as other workers engaged in similar employment at the place of employment. In view of the fact that in accordance with custom in the United States no subsistence allowances are furnished to non-agricultural workers, Mexican workers are guaranteed under this agreement a minimum of 75% of full time employment in each pay period and at least 90% of full time employment during period for which contracted. However, if the worker is afforded an opportunity to work but is unwilling or unable to work the guarantee in the previous sentence shall not apply.

"10. The term of the contract shall be agreed upon by the representatives of the two Governments with privilege of extension with the consent of the worker and approval of the Mexican Government.

"11. At the expiration of the contract, and if the same is not renewed, the authorities of the United States shall consider the continued stay of the worker in the territory of the United States to be illegal from an immigration point of view, with the exception of cases of physical impossibility of the worker to return to Mexico.

"C. Savings Fund

"The War Manpower Commission assumes responsibility for the safe-keeping of amounts contributed by Mexican workers for the formation of the

Savings Fund until such amounts are credited to the Bank of Mexico in such agency or agencies of said bank in the United States and which agencies will be determined by means of an exchange of notes. The Bank of Mexico for its part will transfer the sums in question to the Banco del Ahorro Nacional, S.A.

"Whenever the War Manpower Commission shall have made the deposits referred to in the previous paragraph it shall send directly to the Banco del Ahorro Nacional, S.A., a list containing the names of the beneficiaries and the amount corresponding to each of them for the above-mentioned fund.

"GENERAL PROVISIONS

"It is understood that the War Manpower Commission will cooperate with such other agencies of the Government of the United States in carrying this understanding into effect whose authority under the laws of the United States are such as to contribute to the effectuation of the understanding. Either Government shall have the right to renounce this understanding giving appropriate notification to the other Government ninety days in advance. This understanding may be formalized by an exchange of notes between the Ministry for Foreign Affairs of the Republic of Mexico and the Embassy of the United States of America in Mexico."

I, therefore, take this opportunity to inform Your Excellency that the text of the above agreement has received the approval of the United States Government. It is the desire of the United States Government that the arrangement should come into effect today.

I desire to express my gratitude to Your Excellency for the manner in which the negotiations leading up to this agreement were conducted. The Mexican representatives have at all times had a real comprehension of the urgency and necessity for these workers in the United States. On the other hand, the United States representatives recognize the full value of this contribution of Mexico to the joint war effort.

I would appreciate it, therefore, if Your Excellency would indicate that the proposed agreement is acceptable to the Mexican Government.

Accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

G. S. MESSERSMITH

His Excellency

Señor Licenciado EZEQUIEL PADILLA,
Minister for Foreign Affairs,
México, D.F.

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS
UNITED MEXICAN STATES
MEXICO CITY

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MEXICO CITY, *April 29, 1943*

MR. AMBASSADOR:

In your very kind note 1218, of the 29th instant, which for the sake of greater precision I insert below, Your Excellency said as follows:

[For text, see U.S. note, above.]

While thanking Your Excellency most sincerely for the terms in which you are pleased to comment on the cooperation of Mexico in this matter, I beg you to take note that my Government, bearing in mind that the above-inserted agreement represents the result of the conclusions reached by the representatives of our two countries, gives it its complete approval and is agreeable to its coming into force from this date.

I renew to Your Excellency the assurances of my highest and most distinguished consideration.

E. PADILLA

His Excellency

GEORGE S. MESSERSMITH,

*Ambassador Extraordinary and Plenipotentiary
of the United States of America,
City.*